

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
NEW YORK BRANCH OFFICE
DIVISION OF JUDGES

GALA BUS LINES, LTD. and
SAFETYLINE TRANSIT, INC., ALTER EGOS

and

Case No. 29-CA-25864

LOCAL 854, INTERNATIONAL BROTHERHOOD
OF TEAMSTERS, AFL-CIO

Emily De Sa, Esq., for the General Counsel.
Oleg Geystin, for the Respondents.
George A. Kirschenbaum, Esq., (Vladeck, Waldman,
Elias and Engelhard, P.C.), NY, for the Charging Party.

DECISION

Statement of the Case

STEVEN FISH, Administrative Law Judge. Pursuant to charges and amended charges filed by Local 854, International Brotherhood of Teamsters, AFL-CIO, herein called the Union or Charging Party, the Director for Region 29 issued a complaint and Notice of Hearing on December 24, 2003, ¹ alleging that Gala Bus Lines, LTD. herein called Respondent Gala, and Safetyline Transit, Inc., herein called Respondent Safetyline, and collectively called Respondents, have violated Sections 8(a)(1) and (5) of the Act by refusing to continue recognizing the Union and by refusing to apply the terms and conditions of employment contained in a collective bargaining agreement between the Union and Respondent Gala.

The trial with respect to the allegations in said complaint was held before me in Brooklyn, New York on February 24, 2004.

A brief has been filed by Charging Party. General Counsel filed a letter Memorandum in lieu of a brief. Based on my careful consideration of these documents, as well as the overall record, including my observation of the demeanor of the witnesses, I issue the following:

Findings of Fact

I. Jurisdiction and Labor Organization

Respondent Gala is a corporation with its principal place of business located at 146 Wolcott Street, Brooklyn, New York, herein called the Brooklyn facility, where it has been engaged in the transportation of pre-kindergarten children for New York City's Department of

¹ All dates referred to are in 2003 unless otherwise indicated.

Transportation.

During the past year, Respondent Gala, received gross revenues in excess of \$250,000 and purchased and received at its Brooklyn facility, gasoline and other products, goods and materials, valued in excess of \$5,000 from other enterprises located within the State of New York, each of which enterprises having received said products directly from points outside the State of New York.

Respondent Gala is an employer engaged in commerce within the meaning of Section 2(2),(6) and (7) of the Act.

Respondent Safetyline, is a New York Corporation, that commenced operations in February of 2003, with its principal office and place of business at the Brooklyn facility, where it has been engaged in the operation of the transportation of pre-kindergarten children for New York City's Department of Transportation.

Based on a projection of its earnings, since it commenced operations in February of 2003, Respondent Safetyline, will derive gross annual revenues in excess of \$250,000 and will purchase and receive gasoline and other products, goods and materials valued in excess of \$5,000 from other enterprises located within the state of New York, each of which enterprises having received said products directly from points outside the State of New York.

Respondent Safetyline is an employer engaged in commerce within the meaning of Section 2(2), (6) and (7) of the Act.

The Union is a labor organization within the meaning of Section 2(5) of the Act.

II. Facts

On July 18, 2002, in case number 29-RC-9832 the Union was certified as the collective bargaining representative for drivers, escorts and mechanics employed by Respondent Gala at its 146 Wolcott Street, Brooklyn, New York facility. Thereafter, Respondent Gala and the Union entered into a collective bargaining agreement effective from November 1, 2002 through October 31, 2005. Said agreement provides *inter alia* that Respondent will check off dues and initiation fees from the salaries of employees and transmit same to the Union.

At the time that the contract was executed, Respondent employed over 80 employees in the unit. In December of 2002, Union representative Tony Evaristo was informed by several employees that Oleg Yemyashev, the General Manager of Respondent Gala had told employees that there "would be no more union." Evaristo immediately confronted Yemyashev and Oleg Geystrin, who is the president and owner of the Company, with these assertions. They denied that Respondent Gala had any intention of getting rid of the Union.

In February of 2003, Yemyashev called Evaristo, and notified him that since Respondent had lost some contracts with the New York City Department of Transportation (DOT) that it would have to layoff half of the staff in March of 2003.

At around that time, Evaristo received reports from employees that Respondent was bringing buses into the yard marked "Safetyline."

In March of 2003, Evaristo and Ann Stankowitz, the Union's Secretary/Treasurer met with Geystrin and Yemyashev at Respondent Gala's office. Evaristo asked what the Safetyline

buses were doing in the yard. Yemyashev replied that Safetyline "was a completely different entity." After a discussion about the layoffs, and an agreement by Respondent Gala to layoff by seniority, Evaristo asked if any of the laid off employees could be employed by Safetyline? Yemyashev replied that he would try to employ as many as possible.

After the layoffs were effectuated, Evaristo received another call from Yemyashev. He told Evaristo that Respondent Gala had lost another account, because a student had been left on the bus. Therefore, the DOT had canceled the contract and fifteen more employees would be laid off.

Evaristo then contacted Paul Stanton a representative of the DOT. Evaristo complained to Stanton about the loss of the run because of one incident. However, Stanton stated that it was a serious charge and Respondent Gala would not be able to continue to service that account. Stanton also told Evaristo that he should be interested to know that Respondent Gala and Respondent Safetyline "are the same and that they have the same owner."

Sometime in March, Debbie Arice, a matron informed Evaristo that she was still being paid by Respondent Gala, although she was now employed by Respondent Safetyline. He asked her for a copy of her pay stub, which she gave him, which confirmed that she was still being paid by Respondent Gala.

Evaristo then contacted its attorney, who subsequently obtained Vendex ² documents from the DOT. These documents showed that Respondent Gala and Respondent Safetyline had the same owner and officer (Oleg Geystin), operated out of the same location and had the same telephone and fax numbers. Moreover the documents lists Respondent Gala and Respondent Safetyline as "affiliated entities."

In April of 2003, Evaristo and the Union's president Daniel Gotto met with Yemyashev at the Union's office. Evaristo stated that the Union felt that Gala and Safetyline were alter egos and wanted recognition to protect the workers. Yemyashev did not deny the relationship between Gala and Safetyline, but informed the Union officials that he was trying to keep both companies afloat. He added that he intended to try to bid on work for both companies, but if the Union pressed the issue with respect to recognition, both companies might go bankrupt.

After this meeting, the Union's sent a letter dated April 11, to Respondent Safetyline. The letter requests that Respondent Safetyline recognize the Union as the bargaining agent for its employees and to apply the terms of the contract between Respondent Gala and the Union to Safetyline's employees. Respondent Safetyline did not reply to this demand.

Consequently, the Union filed a charge in case number 29-CA-25644 on June 4, alleging that Respondent Safetyline as an alter ego of Respondent Gala, has refused to recognize the Union and refused to apply the terms of the collective bargaining agreement between the Union and Respondent Gala, to the employees of Respondent Safetyline.

Shortly thereafter the Union's attorney informed Evaristo that he had been in contact with the attorney for Respondents, and that some kind of agreement seemed possible. Accordingly, that charge was withdrawn on June 20.

² Vendex documents are documents submitted by companies when bidding for jobs with the DOT.

However, the Union and Respondents were unable to reach an agreement. Respondent's attorney failed to return the calls of the union's attorney. Therefore, on September 29, 2003 the instant charges were filed.

5 Sometime in September, Evaristo asked Geystin why Respondent Safetyline was not recognizing the Union. Geystin replied that they were not making any money.

10 Geystin testified in this proceeding, and stated he is the owner of both Respondent Gala and Respondent Safetyline, and that Safetyline was opened because Gala was in default and could not bid on contracts. Therefore, Respondent Safetyline was opened under another name to "continue this business." He added that Respondent Safetyline can't recognize the Union because the business just started and "we don't have a lot of business."

15 Also in September, Evaristo was at the facility, when drivers and matrons of Respondent Gala picked their routes. Elizabeth Cintron the dispatcher supervisor conducted the picks. She was the dispatcher supervisor for both Respondent Safetyline and Respondent Gala.

20 Also in late September, Evaristo met with both Geystin and Yemyashev at the facility concerning a problem with holiday pay. Yemyashev told Evaristo they might not be able to keep Respondent Gala going any more because they weren't allowed to bid on any work. Yemyashev added that they were going to try to continue to operate Safetyline. After this conversation, Evaristo called Wally Abromowitz of the DOT and complained about the assertion made to him by Yemyashev that Respondent Gala could no longer bid on any work. Abromowitz told Evaristo that Respondent Gala was found in default only on one school, and that had nothing to do with any other school. Thus, Respondent Gala was allowed to bid on any other contracts.

30 Sometime in October Respondent Gala closed. The record discloses that both companies had the same owner (Yestrin) and manager (Yemyashev), and the same dispatcher supervisor (Cintron). The buses used by Respondent Safetyline are the same buses that were used by Respondent Gala, which were used to pick up pre-kindergarten students for the DOT, by both companies. Further, it was stipulated that Respondent Safetyline is not recognizing the Union as the representative of its drivers, escorts and mechanics, nor is it applying the collective bargaining agreement between Respondent Gala and the Union to the employees of Respondent Safetyline.

40 In the latter regard, testimony was adduced that Respondent Safetyline has not made any dues payments to the Union, as well as the fact that Respondent Gala was delinquent with respect to certain payments for dues deducted from salaries of Respondent's Gala's employees.

45 The record also reveals that for the payroll period ending 10/29/03, Respondent Safetyline employed 25 employees. These 25 employees included Geystin, Sara Yemyashev who is Alex Yemyashev's wife and bookkeeper, and Cintron who as noted was a dispatcher supervisor. That leaves 22 employees, who appear to be unit employees. Of these 22 employees, 13 of them were previously employed by Respondent Gala.³

50 ³ These employees are Keisha Downey, Carole Weaver, Debra Arice, Igor Berezovsky, Keisha Hill, Patricia Forbes, Ivy Barke-Perry, Ronnie Lewis, Kevin Riley, Ana Ramos, Aida Ramos, Arleen Rubi and Denise Rivera.

III. Analysis

In assessing whether there is an alter ego relationship between two businesses, the Board considers whether the two entities have substantially identical management, business purpose, operation, equipment, customers and supervisors as well as ownership. *Herbert Industrial Insulation Corp.*, 319 NLRB 521, 522 (1995); *Marbro Co.*, 310 NLRB 1145, 1148-1149 (1993); *Advance Electric*, 268 NLRB 1001, 1002 (1984). The Board also will consider whether the purpose behind the creation of the alleged alter ego was legitimate, or whether instead its purpose was to evade responsibilities under the Act. *Fugazy Continental Corp.*, 265 NLRB 1301, 1302 (1982) enfd., 725 F.2d 1416 (D.C. Cir. 1984). None of these factors is controlling or determinative. *Herbert Industrial, supra*; *Marbro, supra*; *Fugazy, supra*.

Here virtually all of the factors considered by the Board in evaluating alter ego status are present. Both Respondents have the same ownership (Geystin), same management and supervisors (Geystin, Yemyashev and dispatcher supervisor Cintron), use the same buses and equipment and serve the same customers (transporting students for the DOT), operate out of the same location, and use the same office staff. Moreover, over half of the bargaining unit employees of Respondent Safetyline, were formerly employees by Respondent Gala.

These circumstances are more than sufficient to establish alter ego status, regardless of the motivation for establishing Respondent Safetyline. Thus it is not essential to show that Respondent Safetyline was set up to evade Union obligations of Respondent Gala, since the above evidence demonstrates that the companies shared substantially identical ownership management, employee complement supervisors, customers and business purpose. *Lihli Fashions Corp.*, 317 NLRB, 163 (1995) rev'd in part 80 F.3d 743,748 (2nd Cir. 1996); *Marbro supra*; *Leslie Oldsmobile Inc.*, 276 NLRB, 1314, 1315-1317 (1985); *Crawford Door Sales*, 226 NLRB, 114 (1976).

Here, I do not find that Respondent Gala formed Respondent Safetyline in order to avoid its union obligations, but rather that it so for legitimate economic reasons, because it had lost contracts with the DOT, and it felt that bidding under a new company might enable it to obtain more DOT contracts. However, as the above precedent makes clear, the absence of a finding of improper motivation is not essential to an alter ego finding, particularly where as here all of the other factors are present and undisputed.

However, I also find that once the Union began to press Respondent Safetyline for recognition and the application of the Gala contract to its employees, that Respondent Gala then decided to close Respondent Gala and fold its entire operation into Respondent Safetyline. This conclusion is fortified by Yemyashev's statement to Evaristo that if the Union pushed the issue (recognition of the Union by Respondent Safetyline), Respondents "might go bankrupt." Therefore, I find that Respondent Gala's decision to close and transfer its remaining business and send some employees to Respondent Safetyline was at least in part motivated by anti-union animus, and is further evidence in support of a finding of alter ego status. *Fugazy Continental, supra*, at 1303.

Accordingly, based on the foregoing analysis and authorities, I conclude that Respondent Safetyline is and has been an alter ego of Respondent Gala. Inasmuch as it is undisputed that Respondent Safetyline has refused to recognize the Union as the collective bargaining representative of its employees, and refused to apply the terms of Respondent Gala's contract to said employees, Respondent Safetyline and Respondent Gala, as alter ego's have thereby violated Section 8(a)(1) and (5) of the Act. I so find. *Vinisa # LTD.*, 308 NLRB 135, 137 (1992); *Lihli Fashions, supra*; *Advance Electric, supra*.

Conclusions of Law

1. Respondents Gala Bus Lines Inc., and Safetyline Transit, Inc. are employers engaged in commerce within the meaning of Section 2(2), (6) and (7) of the Act.

2. Local 854 International Brotherhood of Teamsters AFL-CIO, is a labor organization within the meaning of Section 2(5) of the Act.

3. Respondent Safetyline is the alter ego of Respondent Gala.

4. All full-time and regular part-time drivers, escorts, and mechanics employed by Respondent Gala and by its alter ego Respondent Safetyline, at its facility located at 146 Wolcott Street, Brooklyn, New York, but excluding all employees of Safetyline Bus, Inc., all employees of Gala Tour, Inc., all dispatchers, office clerical employees, guards and supervisors as defined by the Act constitute a unit appropriate for collective bargaining within the meaning of Section 9(b) of the Act.

5. At all times material herein, the Union has been the exclusive collective bargaining representative of the employees in the appropriate Unit within the meaning of Section 9(b) of the Act.

6. By failing and refusing to recognize and bargain with the Union as the exclusive representative of its employees in the appropriate unit, by failing to honor the collective bargaining agreement with respect to such employees and by failing to apply to such employees the terms and conditions of the Agreement, Respondents Gala and Safetyline have violated Section 8(a)(1) and (5) of the Act.

7. The aforesaid unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

The Remedy

Having found that Respondents Gala and Safetyline have engaged in unfair labor practices in violation of Section 8(a)(1) and (5) of the Act, I shall recommend that it cease and desist there from and take certain affirmative action designed to effectuate the purposes of the Act.

Respondents Gala and Safetyline shall be ordered to recognize and bargain with the Union and honor and abide by the terms of their collective bargaining agreement.

I shall also order Respondents to make whole the employees and the Union ⁴ for any losses suffered because of Respondents failure to honor its agreement with the Union. Such amounts shall be computed as prescribed in *Ogle Protection Service*, 183, NLRB 682 (1976), plus interest as computed in *New Horizons for the Retarded*, 283, NLRB 1173 (1987). Any employee benefit reimbursements shall be made in accordance with *Merryweather Optical Co.*, 240, NLRB 1213, 1216 fn. 7 (1979).

⁴ This would include any losses suffered by the Union, as a result of Respondents failure to comply with the check off provisions of the Agreement.

On these findings of fact and conclusions of law and the entire record, I issue the following recommended ⁵

ORDER

Respondent Gala Bus Lines, Ltd., and its alter ego Respondent *Safetyline Transit Inc.*, Brooklyn, New York, its officers, agents, successors and assigns, shall

1. Cease and desist from

(a) Refusing to recognize and bargain with Local 854, International Brotherhood of Teamsters, AFL-CIO (the Union) as the exclusive collective bargaining representative of the employee in the following appropriate unit:

All full-time and regular part-time drivers, escorts, and mechanics employed by Respondent Gala Bus Lines, Ltd., and by its alter ego Respondent Safetyline Transit Inc., at its facility located at the 146 Wolcott Street, Brooklyn, New York, but excluding all employees of Safety line Bus, Inc., all employees of Gala Tour, Inc., all dispatchers, office clerical employees, guards and supervisors as defined by the Act.

(b) Refusing to honor the terms and conditions of the collective bargaining agreement with the Union.

(c) In any like or related manner interfering with, restraining or coercing its employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Recognize, and on request bargain collectively with the Union as the collective bargaining representative of employees in the appropriate unit.

(b) Reinstate, honor and abide by the terms of their collective bargaining agreement with the Union, and make whole employees and the Union for any losses incurred by virtue of Respondents' unlawful conduct, plus interest as set forth in the remedy section of this decision.

(c) Preserve and, within 14 days of a request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount owing the terms of this Order.

⁵ If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

(d) Within 14 days after service by the Region, post at their Brooklyn, New York facility, copies of the attached Notice marked "Appendix."⁶ Copies of the Notice, on forms provided by the Regional Director for Region 29, after being signed by the Respondents authorized representative, shall be posted by the Respondents and maintained for 60 consecutive days in conspicuous places including all places where Notices to employees are customarily posted. Reasonable steps shall be taken by the Respondents to ensure that the Notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondents have gone out of business or closed the facility involved in these proceedings, the Respondents shall duplicate and mail, at their own expense, a copy of the Notice to all current employees and former employees employed by the Respondents at any time since April 11, 2003.

(e) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated

Steven Fish
Administrative Law Judge

⁶ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES

Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this Notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union
Choose representatives to bargain with us on your behalf
Act together with other employees for your benefit and protection
Choose not to engage in any of these protected activities

WE WILL NOT refuse to bargain with Local 854, International Brotherhood of Teamsters, AFL-CIO (the Union) as the exclusive collective bargaining representative of our employees in the following appropriate unit:

All full-time and regular part-time drivers, escorts, and mechanics employed by Respondent Gala Bus Lines Ltd., and by its alter ego Respondent Safetyline Transit Inc., at its facility located at the 146 Wolcott Street, Brooklyn, New York, but excluding all employees of Safetyline Bus, Inc. all employees of Gala Tour, Inc., all dispatchers, office clerical employees, guards and supervisors as defined by the Act.

WE WILL NOT refuse to honor the terms and conditions of our collective bargaining agreement with the Union.

WE WILL NOT in any like or related manner interfere with, restrain or coerce our employees in the exercise of the rights guaranteed them by Section 7 of the Act.

WE WILL recognize, and on request bargain collectively with the Union as the collective bargaining representative of our employees in the appropriate unit.

WE WILL reinstate, honor and abide by the terms of our collective bargaining agreement with the Union, and make whole employees and the Union for any losses incurred by virtue of our unlawful conduct, plus interest.

GALA BUS LINES LTD., AND SAFETYLINE TRANSIT, INC.

(Employer)

Dated _____ By _____
(Representative) (Title)

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether employees want union representation and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below. You may also obtain information from the Board's website: www.nlr.gov.

One MetroTech Center (North), Jay Street and Myrtle Avenue, 10th Floor, Brooklyn, NY 11201-4201

(718) 330-7713, Hours: 9 a.m. to 5:30 p.m.

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE DATE OF POSTING AND MUST NOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER MATERIAL. ANY QUESTIONS CONCERNING THIS NOTICE OR COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO THE ABOVE REGIONAL OFFICE'S COMPLIANCE OFFICER, (718) 330-2862.